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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/648,660	08/25/2000	Peter Callas	4926	5895

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EXAMINER
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ROBERTS, PAUL A

ART UNIT	PAPER NUMBER
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3731

DATE MAILED: 12/08/2003

13

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/648,660

Applicant(s)

CALLAS ET AL.

Examiner

Paul A Roberts

Art Unit

3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 10 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 5-9 and 12-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 5-9 is/are allowed.
- 6) ☒ Claim(s) 12-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Response to Amendment***

1. The amendment filed 11/10/03 shall be entered into the application.
2. The finality of the Office action filed 7/7/03 is hereby withdrawn.
3. Status of claims: claims 5-9, and 12-17 are pending.

### ***Specification***

4. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: all elements in the claims or shown in the drawings require antecedent basis in the specification. The intruding ring and the protruding ring lack proper antecedent basis.
5. Element 36, has no description in the specification.
6. The specification draws attention to elements having different names corresponding to the same part on the figures. For example, the applicant calls part 19 of figure 1 an insufflation port and a fluid conduit. Applicant should have exactly one name for each part or state clearly that the names are interchangeable. Another example is the name for element 25. The applicant calls it both an insufflation port and an insufflation inlet. Inlets and ports are not exactly the same, unless the applicant explicitly says so in the specification.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claim 15 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 15 recites the limitations "said intruding rim" in line 2, and "the recessed groove" in line 3. There is insufficient antecedent basis for these limitations in the claim.

***Claim Rejections - 35 USC § 102***

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 12, 14, and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Krauter et al. (Krauter) US 4649904. Krauter discloses a sealing member comprising a hollow cylinder of resilient material (20) having a distal end disposed within the central bore (central bore is the space within the center of element 10) of the body (10) at the proximal end thereof and including an outwardly extending flange (28) integrally formed on the proximal end of the cylinder to overlay the proximal end of the body, the flange including an aperture (shown in figure 3) therethrough in position to substantially align with the central bore of the body upon attachment thereto for receiving therein an endoscopic instrument in fluid-tight sliding sealing engagement within the aperture.

9. Regarding claim 14, element 68 is the protruding ring integrally formed about the cylinder near the distal end thereof for deforming within the central bore of the body to form a fluid-tight seal therewith.

10. Regarding claim 16, Krauter discloses an auxiliary sealing member capable of being inserted within the sealing member of claim 12, the auxiliary sealing member comprising: a

Art Unit: 3731

hollow cylinder of resilient material (40) including an end segment (64) integrally formed on a proximal end of the cylinder having an aperture therethrough, and having an outwardly protruding flange (68) integrally formed about a distal end thereof, the hollow cylinder of the auxiliary sealing member dimensioned to formed a fluid-tight seal within the aperture of the sealing member, and the protruding flange on the distal end of the auxiliary sealing member being disposed to engage the distal end of the sealing member for retaining the auxiliary sealing member within the aperture of the sealing member.

11. Claims 12-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Hunt et al. (Hunt) US 5437646. Hunt discloses a sealing member comprising a hollow cylinder of resilient material (12 and 33) having a distal end disposed within the central bore (central bore is the space within the center of element 21) of the body (21) at the proximal end thereof and including an outwardly extending flange (looking at figure 2, the part of the ring to the outside of element 30 is considered the flange, essentially element 31) integrally formed on the proximal end of the cylinder to overlay the proximal end of the body, the flange including an aperture (13) therethrough in position to substantially align with the central bore of the body upon attachment thereto for receiving therein an endoscopic instrument in fluid-tight sliding sealing engagement within the aperture.

12. Regarding claim 13, the body contains a recessed groove (23). The sealing-member flange comprises a cylinder section (12) extending concentrically with the hollow cylinder (33) toward the distal end thereof to overlay the proximal end of the body and terminate with an inwardly intruding rim (23) integrally formed with the cylinder section (33) and flange and

hollow cylinder, the rim being dimensioned and positioned to engage the recessed groove about the periphery of the body in fluid-tight sealing engagement therein.

13. Regarding claims 14 and 15, element 23 can be labeled a protruding ring integrally formed about the cylinder near the distal end thereof. Additionally, as best understood, element 23 can also be an intruding ring integrally formed on an intruding rim (element 22 is an intruding rim) for deforming within a recessed groove (where element 23 goes into) to form a fluid-tight seal.

***Claim Rejections - 35 USC § 103***

14. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fogarty et al (5979452) in view of Laird (6276661) and Merry et al. (4929235). Fogarty et al. disclose an access port for introducing an endoscope device, as claimed and suggest that any type of seal means may be incorporated with the access port. Laird discloses a fluid seal being used with an access port for introducing an endoscopic device. Merry et al. disclose a fluid seal and an auxiliary fluid seal. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include the fluid seal as disclosed by Laird or Merry et al. into the Fogarty et al.'s access port in order to provide a fluid tight seal about the endoscopic device within the access port. The balloon of the Fogarty device expands laterally and axially about the body. The body is element 44 and the balloon is near (or about) the body. Though 'about' can mean surrounding on all sides, *a tire is about a wheel*, 'about' can also mean "in the vicinity of; around: *explored the rivers and streams about the estate.*" ([www.dictionary.com](http://www.dictionary.com)). The modified

Art Unit: 3731

Fogarty reference anticipates the latter usage. The balloon forms a fluid filling sealing engagement with the tissue about the incision.

### ***Conclusion***


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Sealing caps are well-known in the art. In addition to Hunt 5,437,646 and Krauter 4,649,904, the applicant should consider the following US patents especially relevant to claims 12-16: Stephens et al. 5,607,397; Ouchi 6,165,124; Akui et al. 4,653,477; and Shimonaka et al. 4,809,679. Patents: Hopper et al. 5,697,946; Singh; 6,599,237; and Newman 5,855,549 are multiple lumen catheters similar to claim 5.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul A Roberts whose telephone number is (703) 305-7558. The examiner can normally be reached on 7:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael J Milano can be reached on 703-308-2496. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

Paul Roberts  
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12/02/03

  
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